IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WA.No. 2279 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.6666/2007 Dated 24/05/2007
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APPELLANT: RESPONDENTS 1 & 2 IN WP(C):
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR,
VOCATIONAL HIGHER SECONDARY EDUCATION,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BENNY GERVASIZ

RESPONDENTS: PETITIONER:

VIMALA M.M.,
MUNDACKAL HOUSE, MANAKULANGARA P.O., KODAKARA,
NOW WORKING AS NON-VOCATIONAL TEACHER (BIOLOGY) IN
G.V.H.S.S., VADAKKANCHERRY.

BY ADV.SR.V.P.SEEMANTHINI (Sr.)
ADV. SMT.S.KARTHIKA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S.RADHAKRISHNAN & T.R.RAMACHANDRAN NAIR, JJ.

W.A.No.2279 OF 2007

Dated this the 29th day of November, 2007

JUDGMENT

Radhakrishnan, J.

Writ petition was preferred by the respondent herein seeking a writ of certiorari to quash Ext.P7 order and also a writ of mandamus directing the first respondent to pass orders regularising the petitioner's appointment as Non-vocational Lecturer (Biology) with effect from 05/1/1990 onwards especially in the light of the decision of the Apex court in Uma Devi's case. Learned Single Judge quashed Ext.P7 order and directed the respondents to regularise the petitioner's service as non-vocational lecturer (Biology) with effect from January 5, 1990. It was made clear that petitioner will not be entitled to get arrears of salary or such other service benefits for the period from 1990 till March 31, 2007. It is unnecessary to trace the history of those litigations. Ext.P1 would show that petitioner rendered service in a Government school from 05/1990 till 05/06/2006. She also continued upto 31/03/2007 though with intermittent breaks. All through the year, she had worked only in Government schools

either as a guest lecturer or on provisional basis.

2. She was qualified for appointment as a guest lecturer on the basis of the executive orders which were in force at the relevant point of time. She was appointed in a sanctioned post. She had the requisite qualifications also. According to the petitioner, the Government should have invoked Rule 39 of KS & SSR. Earlier this court had indicated that the petitioner's case deserves sympathetic consideration. The Government however rejected the latest representation by Ext.P7 order dated 21/03/2007. Government took the view that the principle laid down in Uma Devi's case would not come to her rescue and also noted that she had also applied to the post of non-vocational teacher when PSC invited applications. The question that is to be considered is whether Rule 39 has been properly invoked or not. Rule 39 clearly says that " notwithstanding anything contained in the Kerala State & Subordinate Service Rules 1998 or in the Special Rules or in any other Rules or Government Orders the Government shall have power to deal with the case of any person or persons serving in a civil capacity under the Government of Kerala or any candidate for appointment to a service in such manner as may appear to the Government to be just and

equitable". Petitioner was serving the Government of Kerala in a civil capacity. She was working as Non-Vocational Teacher (Biology) in various Government schools throughout her carreer. We are of the view on facts it is a case where the the Government should have invoked Rule 39, which is also just and equitable. Learned Single Judge has elaborately traced the history of the case and it is unnecessary to refer to the facts in detail. The Apex Court in para 53 of the judgment in **Secretary, State of Karnataka and others v. Umadevi and others** (2006(4)SCC 1) referred to the decisions in S.S. Narayanappa, R.N.Nanjundappa and B.N.Nagarajan's case and held these are cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The Apex court noticed the question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this court in the cases above referred to and in the light of the judgment in Uma Devi's case. Uma Devi's case has been explained in **U.P. State Electricity Board v. Pooran Chandra Pandey and others**

(2007(12) Scale 304). We are of the view that the principles laid down in Uma Devi's case as explained in U.P. State Electricity Board v. Pooran Chandra Pandey and others apply to the facts of this case especially petitioner was working throughout in Government schools.

In such circumstances we find no reason to interfere with the discretion exercised by the learned Single Judge in directing requlariseation of the service of the petitioner. No other similarly situated persons have approached either before the Government or before the Apex court and that this shall not be treated as a precedent.

Writ Appeal is dismissed.

K.S.RADHAKRISHNAN
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

sv.